IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8654 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMATSING MALSING VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Banaskantha, at Palanpur, passed an order on June 11, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining-Jamatsing Malsing Vaghela of Ramnagar, taluka

Palanpur, district Banaskantha, under the provisions of the said Act.

2. The detaining authority considered five offences registered against the detenu under the Bombay Prohibition Act and, ultimately, came to a conclusion that the detenu is a bootlegger and his activities are required to be prevented as they are found to be detrimental to public order. The authority also observed that it is not possible to resort to less drastic remedies.

3. The detenu, by this petition, challenges the order of detention on various counts. However, Ms. Patel, learned advocate for the petitioner, has restricted her arguments on the ground of non-consideration representation dated 13th October, 1999. She submitted that the State Government received the representation on 14th October, 1999 and the State Government took a decision on the said representation on October 20, 1999, directing the detaining authority supply the documents. However, the same have not been supplied by the detaining authority, as per the statement made at the Bar by Ms. Patel. She submitted that non-supply of documents has resulted into denial of right of making an effective representation. The continued detention would, therefore, be rendered illegal and on that ground, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. However, he has not controverted the statement made at the Bar by the learned advocate for the petitioner. He stated that the detaining authority has not reported any compliance to the State Government.

5. Considering rival side contentions, it is not in dispute that the petitioner's representation came to be decided by the State Government on 20th October, 1999 and the State Government directed the detaining authority to supply the documents as demanded by the petitioner. However, as per the statement made at the Bar by Ms. Patel, learned advocate for the petitioner, the documents demanded were not supplied by the detaining authority. Compliance is not reported by the detaining authority, as per the statement made by Mr. Dave. The necessary inference is that there is non-compliance of documents which has affected the right of the detenu of making an effective representation. On this ground, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated June 11, 1999, passed against the detenu is hereby quashed. The detenu-Jamatsing Malsing Vaghela is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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